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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/730,116 12/05/00 CARMICHAEL

R 10464.6803

EXAMINER
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PM82/1015

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ART UNIT	PAPER NUMBER
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3617  
DATE MAILED:

10/15/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/730,116

Applicant(s)

Carmichael

Examiner

Ajay Vasudeva

Art Unit

3617



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 20) ☐ Other:

Art Unit:

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1, 5, and 15 are objected to because of the following informalities:
  - (A) In claim 1 (lines 6 and 8) and claim 15 (lines 5 and 7), change all occurrences of “approximate” to -- proximate --.
  - (B) In claim 5 (line 2), after “strap”, insert -- is --.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit:

In claim 1 (line 5), use of “said ballast” (emphasis added) is indefinite as it lacks proper antecedent basis in the claim.

In claim 13 (line 2), use of “said side release buckle” (emphasis added) is indefinite as it lacks proper antecedent basis in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

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5. Claims 1-21 are rejected under 35 U.S.C. 102(a) as being anticipated by publication dated 8/22/2000 at the Halcyon Web-site URL [http://www.halcyon.net/mc/06a\\_mc.shtml](http://www.halcyon.net/mc/06a_mc.shtml).

The Halcyon Web-site publication, submitted with the Information Disclosure Statement (IDS) in the application No. 09/628,836, shows a buoyancy compensator having a releasable ballast system, generally as claimed. The buoyancy compensator comprises a pouch containing ballast, a handle attached to the pouch, a receiving pocket, and a buckle connecting a first strap of the pocket to a second strap of the pouch, and a hip contoured frame plate attached to the pocket and the pouch.

6. Claims 1-8, and 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Carmichael.

Carmichael describes a buoyancy control unit (figure 2), generally as claimed, having a ballast receiving pocket [70], a ballast within a pouch [94], and a side release buckle [100] having a first section and a second section. The first section [101] is attached to a first strap [85] that is coupled to the receiving pocket, and the second section [102] is attached to a second strap [96] that is coupled to the pouch. The buckle member also constitutes a handle for pulling out the pouch.

Art Unit:

7. Claims 1-8, and 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson.

Anderson describes a buoyancy control unit, generally as claimed, having a ballast receiving pocket [30], a ballast within a pouch [34], and a side release buckle [84] having a first section and a second section. The first section [86] is attached to a first strap that is coupled to the receiving pocket, and the second section [84] is attached to a second strap [82] that is coupled to the pouch. The buckle member also constitutes a handle for pulling out the pouch.

8. Claims 1-21 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Applicants' amendment dated 21 June 2001 claims the application to be a continuation-in-part of the application Serial No. 09/628,836, now abandoned.

However, it is noted that the application No. 09/628,836, which discloses the exact invention as being claimed in the present application, has a different inventive entity, and additionally, has no common inventors with the present application.

Therefore, applicant's claim of the present application as being a continuation-in-part of the application Serial No. 09/628,836 is considered to be in error, and thereby invalid.

Further, Claims 1-21 are rejected in view of the invention having been made by a different inventive entity.


Art Unit:

*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Seligman, Franco, and Bowden disclose buoyancy compensators.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992.



S. JOSEPH MORANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600



AV

October 9, 2001